IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11958 of 2006
WITH
CIVIL APPLICATION No. 13872 of 2006
IN
SPECIAL CIVIL APPLICATION No. 11958 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SACHI KANTIBHAI RANA - Petitioner(s)
Versus
KJ PANDYA COLLEGE OF PHYSIOTHERAPY & 3 - Respondent(s)

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Appearance :
MR JR NANAVATI WITH MR NIRAV C THAKKAR for Petitioner(s) : 1,
MR ND NANAVATI WITH MR MITUL K SHELAT for Respondent(s) : 1,
MRS VD NANAVATI for Respondent(s) : 2,
GMR KRUNAL D PANDYA ASST.GOVERNMENT PLEADER for Respondent(s) : 3,
TMR BP TANNA WITH MRS MAHROOK KERRAVALA for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 05/07/2007

ORAL JUDGMENT

1. This petition has been filed by the petitioner, who is a student of respondent No.1 – College (hereinafter referred to

as “the College”), challenging the action of the respondent No.2 (hereinafter referred to as “the University”) in not permitting the petitioner to appear in the examination which was to be held in July, 2006 after enrolling the petitioner. The petitioner has made the following prayers in paragraph No.7 of the petition;

> “(A) To admit this petition.
> (B) To issue appropriate writ, order or direction
> (i) directing the respondent No.1 to fill the examination form of the petitioner so as to enable her to appear in the ensuing examination of July, 2006;
> (ii) directing the respondent No.2 to clear the enrollment procedure of the petitioner forthwith so as to enable filling and clearing the examination form of the petitioner;
> (iii) further be pleased to direct the respondents to permit the petitioner to appear in the ensuing examination in July, 2006 and ;
> (iv) award appropriate exemplary damages to the petitioner from the respondent No.1 college in view of the mental agony, pain and stress suffered by the petitioner because of neglect and negligence on the part of the respondent No.1 College;
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> 7(BB) to issue appropriate writ, order or direction directing the respondent No.4 to approve the admission of the petitioner to Physiotherapy

Course in respondent No.1 College and consequently direct the respondent University to enroll the petitioner as student for the purpose of all courses of Physiotherapy."

7(C) During pendency and final hearing of this petition, be pleased to direct the respondents to process and clear the enrollment form and examination form of the petitioner forthwith and also direct the respondents to permit the petitioner to appear in the ensuing examination in July, 2006;

7(D) To provide costs of the present petition;

7(E) To pass such other and further orders as may be deemed fit in the facts and circumstances of the present case."

2. The facts which are not in dispute are that the petitioner obtained admission to Physiotherapy Course conducted by the College pursuant to the vacancies which had arisen sometime in October, 2005. It is the say of the petitioner that on 25/10/2005 the admission was secured by her on payment of fees to the tune of Rs.35,840=00, accompanied by the deposit of Rs.25,000=00. That the petitioner attended the college regularly and pursued her studies. The annual examination was to be held by the University sometime in July, 2006 and

therefore, the petitioner inquired from the Principal of the College as regard the procedure to be followed for filling up of necessary form. On 25/5/2006, the Principal of the College informed the petitioner that the petitioner had not been enrolled with the University and, therefore, the examination form could not be filled up. It is further averred by the petitioner that the College had never sent enrollment form to the University and, hence, the University had not enrolled the petitioner. According to the College, the enrollment form had not been forwarded, because, the admission of the petitioner had been cancelled by the respondent No.4 Committee. It is, at this stage, that the petitioner approached this Court.

3. Initially, notice was issued on 21/6/2005 which was followed up by issuance of Rule on 28/6/2006. On 5/7/2007, the court has recorded as under;-

> "The grievance of the petitioner in the present petition is that his name was not sent by the respondent No.1 College to the University for the purpose of permitting the petitioner to appear in the examination. Despite notice and thereafter rule of this Court being served on respondent No.1, no response has so far come on record. Learned advocate Mrs.Nanavati for the University submitted that the University has not received the form of the

petitioner through the College. The reason for not sending the form to the University is not known to her. Under the circumstances, Principal of respondent No.1 is directed to personally remain present before this court on the next date of hearing, i.e. on 12th July, 2006. S.O. to 12.7.2006."

Direct service to respondent No.1 is permitted."

4. Subsequently, pleadings have been completed and the matter has been finally heard.

5. On behalf of the petitioner, Mr.J.R. Nanavati, learned senior advocate, after reiterating the facts narrated in the petition, submitted that the petitioner had done all that was required and there being no fault on the part of the petitioner, the cancellation by respondent No.4 Committee is required to be struck down. It was further submitted that vide order dated 14/7/2006 this Court had, by way of interim arrangement, permitted the petitioner to appear in the examination commencing from 17/7/2006, albeit provisionally. That though the arrangement was purely ad-hoc subject to further orders that may be made by the Court, the petitioner must be granted complete relief by directing the College and respondent No.4 Committee to confirm the admission of the petitioner, with a further direction to the University to enroll

the petitioner permanently (instead of provisionally) and declare the result of the examination taken by the petitioner in July, 2006, so as to enable the petitioner to pursue further study. Mr.Nanavati, learned senior advocate for the petitioner has invited attention to the various communications which have been exchanged by the College with respondent No.4 Committee and submitted that the communication dated 30/12/2005 issued by respondent No.4 – Committee has never been brought to the notice of the petitioner. That even respondent No.4 Committee did not inform the petitioner at any stage that the petitioner was not entitled to secure admission in the Physiotherapy Course.

5.1. Inviting attention to the communication dated 21/10/2005, addressed by respondent No.4 Committee to the College, it was submitted that the cancellation of the admission of two students, vide the said communication, was accepted by respondent No.4 Committee and, hence, there was a clear vacancy which would entitle the petitioner to seek admission. Juxta-positioning the same with the list which appears as Annexure-I to the Affidavit-in-Reply dated 10/7/2006 filed by the University, it was submitted that one of the students namely, Bhansali Priyank Vinodkumar, whose admission was

cancelled, was listed Sr.No.920 in the merit list prepared by respondent No.4 Committee, after holding a Common Entrance Test under the directions or orders made by this Court, while the petitioner was listed at Sr.No.853 of the same merit list. Therefore, the contention was, that the petitioner could not be non-suited on the ground of non-fulfillment of required criteria even if various directions made by the court in different orders were taken into consideration. Mr.Nanavati, learned counsel, therefore, submitted that in the circumstances, the prayers made, were required to be granted permitting the petitioner to continue her studies.

6. On behalf of the respondent College, Mr.Mitul Shelat, learned advocate invited attention to the same correspondence to which reference had been made by Mr.Nanavati, to submit that in each and every communication, the College had categorically invited respondent No.4 Committee to exercise its powers and to allot the students vis-a-vis vacancies that arose on account of cancellation of the admission of two students. That in so far as the College was concerned, there was no intention to admit any student without following the stipulated procedure and therefore, the prayers made by the petitioner ought to be granted. That respondent No.4

Committee, except for saying that the College had not submitted any documents showing that the College had operated the waiting list of GSF CET maintaining the inter-se merit and transparency, had not stated anything qua the petitioner student, as against that a specific objection had been raised vis-a-vis one Shah Vrita Dipak as to not showing the position of the said student on the waiting list of the merit list. He, therefore, submitted that in the circumstances, respondent No.4 Committee had no reason to reject the proposal dated 28/12/2005 made by the College seeking confirmation of the admission of the petitioner.

7. Ms.V.D. Nanavati, learned counsel appearing on behalf of the respondent University submitted that in so far as the University was concerned, it had a very limited role to play. That the University had not enrolled the petitioner student, because, the name of the petitioner did not appear in the list forwarded by respondent No.4 Committee or respondent No.3 Committee, even though the name of the petitioner appeared in the list sent by the College. It was, further, submitted that the University had already complied with the interim directions made by this Court and shall comply with any further directions that may be made by the Court.

8. Mr.B.P. Tanna, learned senior advocate appearing on behalf of respondent No.4 Committee submitted that in so far as the Committee was concerned, it was non-observance of the stipulated procedure by the College, which had a material bearing as to the issue before the Court and the admission of the petitioner per-se was not an issue. That vide communication dated 30/12/2005, respondent No.4 Committee had rejected the proposal of the College, only because, the requirements of merit and transparency were not shown to have been satisfied by the College. Inviting attention to communications dated 14/10/2005, 21/10/2005 and 30/12/2005, addressed by the the Committee to the College, it was submitted that in all the communications, the Committee had specifically directed the College to strictly follow the procedure laid down by the decisions of the Apex Court and various orders of this Court, whereunder, a Self Financed Institution was required to ensure that in the admission process, not only the merits of the aspiring candidate was taken into consideration, but the entire admission process was fair and transparent. That in the present case, the College had failed to satisfy the test of transparency inasmuch as there is no material on record, despite the Committee having called for the same, to show that the knowledge of vacant seats was

made available to all those who were entitled to seek admission on the day on which the vacancies had arisen. It was further submitted that respondent No.4 Committee had categorically informed the College that inter-se merit between the various aspiring candidates had to be maintained bearing in mind the merit list. That this was not done by the College, or at least it was not possible to state that this exercise had been carried out in absence of any material to show the same. That though the petitioner student may be a meritorious student appearing at Sr.No.853 of the merit list, considering that the last admission had stopped in the earlier rounds of counseling at Sr.No.1010, it was necessary for the petitioner to explain as to why the petitioner had not sought admission earlier in point of time and if the petitioner had sought, whether the petitioner had secured the same and then cancelled the same. All these facts were not available on record to ascertain the merits of the petitioner and the transparency which is required to be maintained by the College.

8.1. Referring to the affidavit filed by the University, learned senior advocate contended that the admissions had been finalised in September, 2005 and the last date for enrollment was 10/11/2005, hence, once the last date had gone, there was

no question of petitioner being entitled to seek enrollment. Lastly, it is submitted that in any view of the matter, the petition is not required to be granted as neither the petitioner nor the College had been able to show as to why had the petitioner approached at such a belated stage.

9. In rejoinder, learned advocate for the petitioner submitted that whether the petitioner had sought admission earlier or not, and if not, reasons for the same were issues of facts and had not been raised by respondent No.4 Committee at any stage prior to the oral submissions made today during the course of hearing. That in the circumstances, the petitioner cannot be accused of withholding any information. However, on oral instructions, it was submitted by the learned advocate that the petitioner had not appeared in the first round of counseling, though called for the same, due to family circumstances, and these facts can be verified from the record. Considering the serial number of the merit list at which the name of the petitioner appears, the record of respondent No.4 Committee would reveal that the petitioner was called for counseling in September, 2005 but had failed to appear and had not sought admission anywhere. He, therefore, submitted that assuming that there was any lapse on the part of the

College, the same should not be held against the petitioner so as to deprive the petitioner of her academic career.

10. On behalf of the College, Mr.Shelat learned counsel submitted that the College had not committed any irregularity while admitting the petitioner. That for filling up two vacancies which arose, issuance of public advertisement would be a financially prohibitive exercise and hence the notice inviting the applications had been placed on the notice board of the College. That it was nobody's case that any other meritorious student, other than the petitioner, had sought admission and was denied the same in preference to the petitioner.

11. To a pointed query from the Court as to when the petitioner had been granted admission in October, 2005 and the fees were collected by the college on 25/10/2005, why was respondent No.4 Committee not intimated for a period of two months, considering the communication dated 28/12/2005 addressed by the College to respondent No.4 Committee, learned advocate replied that though there were no specific instructions on the said aspect, he could hazard a guess that it was only because of various litigations in which the College was involved, attention was not paid to this aspect of the matter. It was further submitted that in so far as the grievance

of the petitioner regarding not being intimated about the non-enrollment of the petitioner with the University, it was incorrect to state, because the petitioner had been informed, albeit orally. He, therefore, submitted that the case of the petitioner was one which was required to be accepted as it would otherwise result in unwarranted hardship to the student concerned for so-called technical breach which may have been committed by the College in the admission process.

12. Having heard the learned advocates appearing for the respective parties, it is apparent that at no stage, can the petitioner student be faulted with. There is no dispute as to the fact that the petitioner appears at Sr.No.853 in the merit list. Last student, who was admitted in the earlier round of counseling, appears at Sr.No.1010 and therefore, it is not a case of a student who is being sneaked in without being entitled to on merits. The test as to inter-se merits is thus satisfied in so far as the students who are already admitted. The question that would then survive is, whether there are any other meritorious students whose names appear in the merit list, either at serial number prior to that at which the name of the petitioner appears or subsequent thereto, who have sought admission and been denied. The College has definitely

committed an error in not inviting the applications from the students at large regardless of the financial consideration which weighed with the College for not doing so. However, that lapse per-se cannot be treated to be fatal in the facts and circumstances of the case considering the passage of time. At the same time, it is necessary to take note of the fact that the communication dated 30/12/2005 issued by respondent No.4 – Committee to the College only talks of the College not having submitted any document showing that the College had operated “the waiting list of GSF CET Merit List maintaining inter-se merit and transparency”. The communication does not record that the petitioner is not listed in the merit list. In so far as the grievance regarding inter-se merit is concerned, even if one proceeds on the footing that the College had committed an error, nothing prevented respondent No.4 Committee from verifying its own record to decide whether any other meritorious student who was entitled to seek admission in priority over the petitioner was, or was not, appearing in the merit list. This respondent No.4 Committee could have done on its own considering that the last admission which was secured was by a student appearing at Sr.No.1010 in so far as the College is concerned. Therefore, respondent No.4 Committee cannot cast the entire blame on the College so as

to jeopardise the career of the student who is otherwise not found to be in any default.

13. The grievance made on behalf of respondent No.4 Committee that the petitioner had withheld certain vital facts from the Court requires to be stated to be rejected. If the Committee was of the opinion that the petitioner was required to state before seeking admission as to why the petitioner had not undertaken counseling in the earlier rounds considering the serial number in the merit list at which the name of the petitioner appeared, it was up to respondent No.4 Committee to call upon the petitioner raising a specific query in this regard. Not only did respondent No.4 Committee not undertake such an exercise at the relevant point of time, but the same does not form part of the pleadings of respondent No.4 Committee. In the circumstances, one has to proceed on the presumption that the explanation tendered on behalf of the petitioner during the course of hearing that the petitioner had been invited for counseling but did not attend the same due to family circumstances, is correct.

14. In the aforesaid set of facts and circumstances, the reliefs prayed for by the petitioner, cannot be denied. The

admission secured by the petitioner is required to be confirmed and hence to complete the record, respondent No.4 Committee is directed to issue such a communication to the College and the University only in relation to petitioner within a period of 10 days from today. The interim order of enrollment made by the Court shall continue to operate and the University shall treat the enrollment as permanent and not provisional. Under interim direction issued by this Court, the petitioner student was permitted to take examination in July, 2006, but the result has not been declared. The respondent University shall, therefore, declare the result of the petitioner at the earliest point of time. As a natural corollary, the petitioner shall be entitled to prosecute further studies from academic year 2007-2008 onwards, subject to the petitioner having cleared the examination and fulfilling all other requisite formalities.

15. In so far as the College is concerned, a question arises as to whether the prayer made by the petitioner in paragraph No.7(B)(iv) requires to be granted. The answerer has to be in the affirmative. For determining the quantum, a summary of facts which are required to be taken into consideration are; (i) in the first instance, the respondent College as already

recorded, has failed to maintain transparency; (ii) despite the student having secured admission on 25/10/2005 and paid the fees, the respondent College did not seek endorsement of admission from respondent No.4 Committee before 28/12/2005, despite the fact that the last date for enrollment was 10/11/2005; (iii) the petitioner had not been enrolled and this fact was within the knowledge of the College and yet the petitioner was not informed, notwithstanding the denial made in the affidavit filed by the College; (iv) on 5/7/2006, this Court has recorded "despite notice and thereafter rule of this Court being served on respondent No.1, no response has so far come on record." Further, in the said order, the Court has recorded "Under the circumstances, Principal of respondent No.1 is directed to personally remain present before this Court on the next date of hearing."

16. Thus, on a cumulative appreciation of the aforesaid conduct of the College, it becomes apparent that this is a fit case where prayer made on behalf of the petitioner to impose exemplary costs, is required to be granted. Learned advocate for the respondent College has submitted that instead of imposing exemplary costs either token costs may be imposed or the college may be admonished with a warning so as to

ensure the future conduct. However, the said request cannot be accepted, considering the overall conduct of the college.

17. The petition is allowed in the aforestated terms. Rule is made absolute. Respondent No.1 College shall, by way of costs, Pay 50% of fees payable for academic year year 2007-2008 of the petitioner student, either by not collecting the same from the petitioner student if the petitioner becomes entitled to continue further studies, or pay by an Account Payee Cheque within a period of 10 days from the date it becomes apparent that the petitioner is not entitled to continue further studies.

18. In light of the aforesaid order made in the main petition, Civil Application has become infructuous and is disposed of accordingly.

(D.A. MEHTA, J.)

Rafik